

1. Assets of Syzygy put into Atari at its incorporation 6/72; \$5,000. was initial capital ----- 3:16-24;
4:22-
5:11, 24-27
2. Bushnell & Dabney were partners in Syzygy ----- 4:2-8
3. Does not recall if there was a written partnership agreement ----- 4:9-19
4. Does not recall whether patent application was treated as Syzygy asset and transferred to Atari as part of assignment of assets ----- 8:10-23
5. Does not remember agreeing to pay Dabney 1/4 million for his interest in patent application ----- 9:28-10:15
6. Does not remember exact form of deal re purchase of stock for Dabney for \$86,000 ----- 10:19-
11:9, 24-27
7. Does not remember how much stock he had when Atari was incorporated ----- 12:12-14
8. Does not recall that stock not issued til Feb. 73 ----- 12:20-
13:1, 9-11
9. Does not recall whether buy-out of Dabney stock left him as sole shareholder ----- 13:12-21
10. Pltf's Exh. 2 - agreement to sell Dabney's interest - prepared after discussions w/ Dabney; Dabney interested in maximum tax benefit ----- 14:1-24
11. Did not believe Dabney had independent interest in patent application as opposed to interest in his Atari stock ----- 14:25-28
15:9-13, 22-
16:2;
17:6-9
12. Considered patent application to be part of Syzygy assets ----- 15:2 -
16:2
13. After Atari formed Syzygy no longer existed independently ----- 16:8-18
14. Considered patent application became property of Atari upon its formation ----- 16:19-23

15. Initial partnership arrangement w/Dabney 50/50; later 60/40 -----	17:10-14 18:1-11
16. Does not know the value Atari placed on patent at time of agreement w/Dabney, or at present -----	19:27-20: 7, 21:9-13
17. Some of the Atari assets received a stepped up basis following merger of Atari (Cal) into Atari (Dela) -----	20:17-23
18. Does not know if patent value basis increased after merger -----	21:17-27
19. Dick Groth, VP of finance, would know present basis of patent -----	22:1-10
20. Does not remember telling any stockholders that patent belonged to Atari, not Bushnell ---	24:27- 25:6
21. Reason for buying Dabney out per 3/1/73 agreement between Dabney & his atty -----	26:8-28 27:1-4, 15-16
22. McGrane recites 3/11/73 agreement to sell (pltf's #2) & poses questions -----	27:24- 31:24
23. Dabney helped to develop Pong -----	32:7-16
24. Believes agreement w/Dabney was fair -----	32:25-33:5
25. 11/24/72 patent application not based on R & D work on computer space game -----	33:21 - 23:11
26. Had no opinion of value of patent at that time -----	35:7-10
27. Royalties paid by Midway for Pong were calculated on percentage of gross sales -----	35:17-26
28. Thinks initial selling price of Pong was \$925 -----	36:22-24
29. Does not recall percentages discussed w/ Midway - would have been under 5% -----	37:3-19
30. Sent ltrs to mfgs re licensing modulus counting system; does not recall intended asking price -----	37:28- 38:18 39:1-6
31. Atari looked at schematics of other co's games to determine possible patent infringements -----	41:28- 42:5

32. Bushnell felt there were many infringers -----	43:11-13, 21-22
33. Microprocessor games do not use modulus counting system -----	44:8-20
34. Most Atari games in last two years use microprocessor rather than modulus counting system -----	45:10-21
35. Does not remember whether Control Sales used mod - counting system in its home video game -----	46:28- 47:5
36. Does not recall making stmt in '73 Business Week article -----	47:15- 48:2
37. Does not believe patented device prevented copying Atari game -----	48:14-19 49:1-3
38. Gran Trak & Gotcha are only games not copied -----	49:19-28 50:18-21
39. Another agreement entered into w/Dabney 10/26/75 - Atari released Dabney for certain obligations of 10/26/73 deal -----	51:12-17 52:1-10
40. Atari defaulted on note to Dabney, who sued -----	53:1-16 54:18-21
41. Atari had net worth in excess of 1/4 million dollars in '73 -----	55:2-9

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NUTTING ASSOCIATES, a Nevada corporation,)	
)	
Plaintiff,)	
)	
vs.)	No. C-77-2443 AJZ
)	
ATARI, INC., a Delaware corporation; NOLAN BUSHNELL, an individual,)	
)	
Defendants.)	

BE IT REMEMBERED that, pursuant to Stipulation
and on Wednesday, June 28, 1978, commencing at the hour of
9:30 a.m. at the offices at 1165 Borregas Drive, Sunnyvale,
California, before me, WENDY LEE VAN MEERBEKE, a Certified
Shorthand Reporter, License No. 3676, and a Notary Public
in and for the County of Orange, State of California,
personally appeared

NOLAN BUSHNELL

who was called as a witness by plaintiff.

NOTICE

THE ORIGINAL OF THIS DEPOSITION IS IN OUR
OFFICE AND WILL BE FILED IN THIRTY DAYS
WITH THE CLERK OF THE COURT IN WHICH THE
ACTION IS PENDING, UNLESS OTHERWISE NOTI-
FIED BY COUNSEL.

OBUJEN & MCCUTCHEON
OFFICIAL REPORTERS & NOTARIES

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I N D E X

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 <u>EXHIBITS FOR THE PLAINTIFF'S:</u>	
1 Two-page document entitled "Assignment and Bill of Sale"	6
2 Six-page document entitled "Agreement to Sell"	7
3 Three-page document entitled "Agreement to Redeem Stock"	9
4 Three-page document entitled "Assignment"	9
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6 Six-page document entitled "Syzygy Co. Financial Statements, Year Ended 1971"	17
7 Seven-page document entitled "Syzygy Co. Financial Statements, Six Months ended June 30, 1972"	17
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A P P E A R A N C E S

For plaintiff: BURD, BARTKO & WELSH
One Maritime Plaza, Suite 1440
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BY: WILLIAM N. McGRANE, Esq.

For the defendants: HOPKINS & CARLEY
525 University Avenue, Suite 1320
Palo Alto, California 94301
BY: BRUCE N. MUNRO, Esq.

IT WAS STIPULATED that said deposition may be taken before WENDY LEE VAN MEERBEKE, a Notary Public in and for the County of Orange, State of California.

IT WAS FURTHER STIPULATED that all objections to questions propounded to said witness shall be reserved by each of the parties, save and except any objections as to the form of the questions propounded.

IT WAS FURTHER STIPULATED that said deposition may be used with the same full force and effect if not signed as though it were signed, assuming the witness has had reasonable opportunity to read and sign said deposition.

IT WAS FURTHER STIPULATED that, in the event the witness refuses to answer any question, the Notary has instructed the witness to answer, and the witness still refuses to answer on advice of counsel.

IT WAS FURTHER STIPULATED that said deposition may be taken down in stenotype by WENDY LEE VAN MEERBEKE, a Certified Shorthand Reporter, and not interested in any way in the case, or any of the parties involved.

1 ---o0o---

2 NOLAN BUSHNELL

3 having been first duly sworn by the
4 Notary Public to tell the truth, the
5 whole truth, and nothing but the truth,
6 was thereupon examined and testified
7 as follows:

8 MR. McGRANE: We are going to be referring to the
9 patent application and a patent which has got the number
10 379383, which is the subject of this litigation.

11 Counsel, I'd like to stipulate at the beginning of
12 the deposition that any reference that I make to the patent
13 unless otherwise noted is to that patent.

14 MR. MUNRO: That's fine.

15 EXAMINATION BY MR. McGRANE

16 MR. McGRANE: Q. Mr. Bushnell, do you recall when
17 Atari, Inc. was incorporated?

18 THE WITNESS: A. Yes.

19 Q. When was that? A. June 22nd, 1972.

20 Q. Okay. Now, did you contribute personally
21 anything to the capital account of Atari, Inc. when it
22 was incorporated? A. Only inasmuch as
23 there were certain assets of a company called Syzygy that
24 was rolled into that corporation.

25 Q. You say a company called Syzygy. Was Syzygy a
26 corporation or a partnership?

27 A. That was a partnership.

28 Q. It wasn't a corporation?

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A. No.

Q. Who, if anyone, was or were your partners in Syzygy Company at the time certain of its assets were attributed to the capital account of Atari, Inc.?

A. Myself and Fred Dabney.

Q. Do you recall what percentage of the partnership each of you had? A. It was either 50/50 or 60/40. I don't remember which.

Q. Was there a written partnership agreement in existence at the time that the assets or certain assets of the Syzygy partnership were attributed to the capital account of Atari, Inc.?

A. I think so. I don't remember for sure.

Q. You don't remember one way or the other right now? A. No.

Q. Was there ever at any time, to your recollection, a written partnership agreement as opposed to an oral partnership agreement between yourself and Mr. Dabney?

A. I don't remember.

MR. McGRANE: Off the record.

(Whereupon, a discussion was held off the record.)

MR. McGRANE: Q. Now, was there any written record made of the assets which were contributed to Atari, Inc.?

THE WITNESS: A. Yes. I believe in order for the transfer to be tax-free, I think the assets were assigned certain values. As I remember, the initial capitalization was like \$5,000 of the corporation.

Q. Go ahead.

1 A. That represented some growth from the time we
2 had started Syzygy Company.

3 Q. Okay. Let me show you a document, which is
4 a court document, that was filed in another lawsuit by your
5 company, Atari, Inc., in response to an interrogatory from
6 the plaintiff named Fun Games, Inc., which asks among other
7 things: "What was the initial capitalization of Atari, Inc.'s
8 predecessor corporation?"

9 The answer to which is: "The initial capitalization
10 was the assets of Syzygy Company from which \$5,000 was
11 designated as a contribution to capital."

12 If you are saying the same thing in answer to my
13 questions that is essentially contained in that answer to
14 interrogatory --

15 MR. MUNRO: I am going to object to the form of that
16 question. You can ask him what his recollection is.

17 MR. McGRANE: Okay.

18 MR. MUNRO: Are these interrogatories directed to
19 him or are they directed to Atari?

20 MR. McGRANE: Atari, Inc., and Nolan K. Bushnell. They
21 are both defendants in the antitrust case.

22 Off the record.

23 (Whereupon, a discussion was held off the record.)

24 MR. McGRANE: Q. Mr. Bushnell, to the best of your
25 present recollection, isn't the answer given to that question
26 in that interrogatory true and correct?

27 THE WITNESS: A. Yes.

28 Q. Now --

1 MR. MUNRO: This probably will help you, Bill. I have
2 come across something.

3 MR. McGRANE: Off the record.

4 (Whereupon, a discussion was held off the record.)

5 MR. McGRANE: Would you mark this?

6 (Whereupon, the two-page document
7 entitled "Assignment and Bill
8 of Sale" is marked by the
9 Reporter as Plaintiff's Exhibit
10 1 for identification.)

11 MR. McGRANE: Q. All right. Mr. Bushnell, you've
12 just handed me a document which I have had marked as
13 Plaintiff's Exhibit 1. Do you recollect that the copy
14 I have is unsigned? Do you recollect that you and Mr.
15 Dabney, in fact, signed the document?

16 THE WITNESS: A. I don't know.

17 Q. You don't know?

18 MR. MUNRO: He wouldn't know. I don't know either.

19 MR. McGRANE: All right.

20 MR. MUNRO: That's a copy.

21 MR. McGRANE: Q. Do you recollect that the balance
22 sheet of June 30, 1972, which is shown as an attachment
23 to the assignment and the bill of sale, which is marked
24 as Plaintiff's 1, was, in fact, the correct asset inventory?

25 THE WITNESS: A. That's so long ago. It almost seems
26 to me there should be a statutory bar on stuff that long
27 ago.

28 MR. MUNRO: Nolan, he is asking for your actual
recollecion.

THE WITNESS: I don't know.

1 MR. MUNRO: I don't know how he could possibly
2 recollect.

3 MR. McGRANE: Q. Mr. Bushnell, look at this balance
4 sheet and tell me -- see if you can answer this question for
5 me: Do you recollect whether or not the patent application,
6 which later resulted in the issuance of a patent to you,
7 was included anywhere in that balance sheet of an asset of
8 Syzygy Company, a partnership?

9 THE WITNESS: A. It's definitely not a line item.

10 Q. Let me show you another document in effort to
11 assist your recollection.

12 MR. McGRANE: Mark this as 2 to this deposition.

13 (Whereupon, the six-page document
14 entitled "Agreement to Sell" is
15 marked by the Reporter as
16 Plaintiff's Exhibit 2 for
17 identification.)

18 MR. McGRANE: Q. Mr. Bushnell, did you look at what's
19 been marked as Plaintiff's Exhibit 2?

20 THE WITNESS: A. Yes.

21 Q. Okay. Can I have it back?

22 A. Sure.

23 Q. The question I asked you was -- you were looking
24 at Plaintiff's 1, which is the Assignment and Bill of Sale
25 which had attached to it the balance sheet. The question
26 I asked you was whether looking at the balance sheet you
27 could remember whether or not the asset -- whether you had
28 valued the patent application and treated it as an asset
of Syzygy Company on the balance sheet and consequently as
a result of the bill of sale transferred the same to Atari

1 as an asset of Atari in June of 1972.

2 MR. MUNRO: Is that a question?

3 MR. McGRANE: No. It's background.

4 Q. This document states in paragraph 3:

5 "On July 1st, 1972, Atari, Inc.,
6 Buyer, was formed and certain assets were
7 transferred to Buyer with the exception of
8 said invention, which was retained by the
9 Seller and Bushnell, individually."

10 The question is: With all that background have you
11 looked at the documents and looked at that document, do you
12 remember whether or not the patent application was treated
13 as an asset of Syzygy Company and transferred to Atari,
14 Inc. as a part of the assignment of certain assets of
15 Syzygy Company in June, 1972?

16 MR. MUNRO: I am going to ask for a clarification
17 on that question. When you say "was treated" --

18 MR. McGRANE: Was it --

19 MR. MUNRO: What do you mean? Treated by whom? How
20 did he consider it or Atari or somebody else?

21 MR. McGRANE: I'll do it over again.

22 THE WITNESS: I'll make it very simple. I don't
23 remember.

24 MR. McGRANE: Q. Well, do you remember whether or not
25 the statement that's made in paragraph 3 of Plaintiff's 2
26 is a true statement or a false statement?

27 THE WITNESS: A. I just don't remember what was going
28 on back in those days. It's a situation which in the

1 application -- I just don't remember.

2 Q. All right.

3 MR. McGRANE: Would you mark this next in order,
4 please?

5 (Whereupon, the three-page
6 document entitled "Agreement
7 to Redeem Stock" is marked by
8 the Reporter as Plaintiff's
9 Exhibit 3 for identification.)

10 MR. McGRANE: Let's also mark this document as 4.

11 (Whereupon, the three-page
12 document entitled "Assignment"
13 is marked by the Reporter as
14 Plaintiff's Exhibit 4 for
15 identification.)

16 MR. McGRANE: Q. Mr. Bushnell, looking at Plaintiff's
17 2, which is the Dabney agreement, do you recollect that in
18 1973, Atari entered into an agreement with Mr. Dabney to
19 pay him a quarter of a million dollars in exchange for his
20 interest in a patent application, which at that time had
21 the number 309268?

22 MR. MUNRO: I am going to object to the form of that
23 question. The document speaks for itself as to what the
24 agreement is. You are asking what his recollection of
25 the agreement is. I will object to the form of that
26 question. What the agreement is is specified in the
27 agreement.

28 MR. McGRANE: That's not what I asked him, I don't
think. If you interpret it that way, I apologize for the
lack of clarity in the question and will rephrase the
question.

Q. Do you remember that in 1973 Atari, Inc., of

1 which you were then president, agreed to pay Dabney a
2 quarter of a million dollars in exchange for his interest
3 in a patent application, which at that time had the number
4 309268?

5 THE WITNESS: A. No.

6 Q. You don't remember that?

7 A. Well, I remember that that -- I don't think
8 we did that.

9 Q. I see. Do you remember that you agreed to pay
10 him a quarter of a million dollars for something?

11 A. Yes.

12 Q. Okay. Do you remember agreeing to pay him
13 any money in addition to a quarter of a million dollars
14 for anything else?

15 A. Not to my knowledge.

16 Q. Mr. Bushnell, I'd like you to take a look at
17 what's now marked as Plaintiff's 3.

18 A. Okay.

19 Q. Does Plaintiff's 3 refresh your recollection that
20 on or about March 1st, 1973, Atari, Inc. agreed to redeem
21 Fred Dabney's stock in Atari at book value and to pay him
22 \$86,000 for it?

23 A. Yes. I guess that's
24 part of --

25 MR. MUNRO: Well, I really ask you not to guess. He's
26 asking for your actual recollection, if you have one and
27 not to guess based on what the document is. Again, I
28 want you to rely only on your actual recollection in
responding to this question. If something refreshes an

1 actual recollection, that's fine.

2 THE WITNESS: I don't remember the exact form of the
3 deal.

4 MR. McGRANE: Q. Do you remember that you agreed to
5 pay him -- do you remember you agreed to pay him \$86,000
6 for stock?

7 MR. MUNRO: Counsel, I am going to object to the form
8 of that question.

9 THE WITNESS: No.

10 MR. MUNRO: I am going to object to the form of the
11 question anyway because the agreement speaks for itself.

12 MR. McGRANE: I am not asking about the agreement.
13 I am asking if he remembers paying \$86,000 for stock.

14 MR. MUNRO: You just asked him if he remembers if
15 he agreed to do something. The agreement --

16 MR. McGRANE: How do I know this was the only agreement,
17 Counsel? I don't know that. I have a right to ask a question
18 that's based entirely on recollection.

19 MR. MUNRO: That's true.

20 MR. McGRANE: Then let me do it.

21 MR. MUNRO: You didn't ask him that.

22 MR. McGRANE: I did ask him that.

23 MR. MUNRO: Go ahead.

24 MR. McGRANE: Q. Do you remember that you agreed to
25 pay Dabney, by you I mean Atari, Inc., \$86,000 for his
26 stock interest in Atari?

27 THE WITNESS: A. I don't remember that.

28 Q. Do you remember that you agreed to pay him --

1 all right. Let's start over from the beginning.

2 Do you remember in 1973 that you made the personal
3 decision to have Atari buy Dabney out of the company?

4 A. It was more than a personal decision. But, yes.

5 Q. Were there any other shareholders of Atari
6 besides yourself and Fred Dabney in February, 1973?

7 A. I don't remember for sure. Al Corn may have
8 been, A-l C-o-r-n.

9 Q. Do you remember how many shares of Atari stock
10 you held in 1973?

11 A. No, I don't.

12 Q. Do you remember how many shares of stock of
13 Atari that you got when you incorporated Atari?

14 A. No, I don't.

15 Q. Okay. A. Just a second. It might
16 have been three thousand.

17 MR. MUNRO: Again, Nolan, when you start guessing
18 on what it might have been, you are asking for trouble.

19 THE WITNESS: Okay.

20 MR. McGRANE: Q. Now, do you recall, Mr. Bushnell,
21 that no shares of stock were issued in Atari for a period
22 of time after you incorporated?

23 THE WITNESS: A. I don't remember.

24 Q. Take a look at paragraph 1, which is the
25 recital. It's Plaintiff's 3.

26 A. What is it that you want me to look at?

27 Q. The recital section which recites in part that
28 the stock in the company was initially issued as of July 1st,

1 1972 in February 1973.

2 MR. MUNRO: That's a statement. What's the question
3 to the witness?

4 MR. McGRANE: I want him to read it first, and then
5 I will ask him the question.

6 MR. MUNRO: He's read it.

7 MR. McGRANE: Q. Have you read it?

8 THE WITNESS: A. Yes.

9 Q. Do you remember that that's a true statement
10 today, that, in fact, the stock was not issued until
11 February, 1973? A. No, I don't remember.

12 Q. Okay. You don't have any recollection one way
13 or the other as to whether the effect of the buy-out of
14 Dabney or the redemption by Atari of Dabney's stock was
15 to leave you the sole shareholder of Atari in 1973?

16 A. No. I know I wasn't the only one.

17 Q. Was there ever a time, at any time that you can
18 remember, where you were the sole shareholder of Atari?

19 A. No.

20 Q. You're sure of that?

21 A. No, I am not sure. I don't think there was.

22 MR. McGRANE: Off the record.

23 (Whereupon, a discussion was held off the record.)

24 MR. McGRANE: Could I have this marked as the next in
25 order?

26 (Whereupon, the two-page document
27 entitled "The Board of Directors,"
28 is marked by the Reporter as
Plaintiff's Exhibit 5 for
identification.)

1 MR. McGRANE: Q. Mr. Bushnell, do you have any
2 independent recollection at all today of this document,
3 which is Plaintiff's 2, which has as its subject matter
4 the sale to Atari of Dabney's recited interest in a patent
5 application?

6 THE WITNESS: A. Yes.

7 Q. Would you tell me what that recollection and
8 the circumstances surrounding that agreement by Atari were?

9 A. That was the document that was put together in
10 satisfaction of Dabney's request that his attorney be
11 able to structure this deal for maximum tax benefit.

12 Q. Did Mr. Dabney say that to you?

13 A. Well, in the negotiations.

14 Q. Were you represented by counsel during these
15 negotiations? Physically present listening to what was
16 said between yourself and Mr. Dabney at any time.

17 A. No. I think after work one night we sat down
18 and said: Hey. Things aren't going the way they should.
19 We've got to make a change.

20 Q. Were you the one who suggested to Mr. Dabney
21 that things weren't going the way they should?

22 A. Yes.

23 Q. Did you make a proposal to Mr. Dabney?

24 A. No. I think I asked how much he wanted.

25 Q. Did you understand in your own mind at that
26 time that Mr. Dabney had an independent interest in a
27 patent application as opposed to interest in his shares
28 of stock in Atari?

A. No.

1 Q. You didn't understand that?

2 A. (The witness shakes his head in the negative.)

3 Q. You've got to say something.

4 A. No.

5 MR. MUNRO: He said no.

6 MR. McGRANE: There was a nod as well in there in
7 response to a second question. I asked the witness to
8 try and speak up.

9 Q. Who did you think owned the patent application
10 that was pending in the U.S. Patent Office at the time that
11 you had your discussions about buying Mr. Dabney out of
12 Atari?

13 THE WITNESS: A. I did.

14 Q. By yourself?

15 A. I mean it was my invention.

16 Q. Did you have any understanding at that time
17 that it's possible for an inventor to be the inventor but
18 for some other person for some other reason to have a
19 fee title or title to an invention invented by another
20 even in terms of the patent application?

21 A. I don't know what I knew then.

22 Q. Fine. Did you have any thought at all that
23 the patent application, which was then pending before the
24 U.S. Patent Office, belonged to Mr. Dabney in any way on
25 any basis?

26 MR. McGRANE: Let the record reflect the conference
27 between Counsel and Mr. Bushnell at this point.

28 THE WITNESS: Well, I had always considered that it

1 was sort of part of the assets of Syzygy. It was one of those
2 things -- there was the company. We broke our heads together.

3 MR. McGRANE: Q. "We" being you and Mr. Dabney?

4 THE WITNESS: A. (The witness nods his head in the
5 affirmative.)

6 Q. Say something.

7 A. Yes.

8 Q. Do you remember whether after Atari was formed
9 Syzygy, in your own mind, continued to exist as an
10 independent entity? A. We kept the name

11 and called our game route Syzygy, but it didn't really
12 exist separately but more as an appendage of the Atari
13 Corporation.

14 Q. Did you think of it as just a name you were doing
15 business under, or did you think of it as a different
16 entity with assets and liabilities other than those of
17 the corporation? A. I thought of it as part

18 of the corporation, a dba.

19 Q. Fine. Now, when you incorporated Atari, I take
20 virtually all, if not all, of the physical assets of Syzygy
21 Company -- did you consider the patent application to have
22 become the property of Atari, Inc. at that time?

23 A. Yes.

24 Q. You did. Did you think that Mr. Dabney had
25 any interest in the patent application which was separate
26 and apart from his interest in the company as a result of
27 his shares of stock in the company?

28 MR. MUNRO: I don't think your question is clear there.

1 MR. McGRANE: Could you read it back? Let's listen
2 to it.

3 MR. MUNRO: I think I know the question you were trying
4 to ask. I don't think you asked it.

5 MR. McGRANE: You ask it, Bruce.

6 MR. MUNRO: The question is: Did you understand that
7 Dabney had any interest in the patent other than through
8 his ownership in Atari?

9 THE WITNESS: I don't think I even thought about it.

10 MR. McGRANE: Q. That's fine. Now, I believe you
11 testified that you and Dabney had approximately either a
12 50/50 or a 60/40 partnership. I am going to show you some
13 other documents. These are a series of financial statements,
14 one for the year ending June 30, 1971.

15 MR. McGRANE: Mark this next in order.

16 (Whereupon, the six-page document
17 entitled "Syzygy Company
18 Financial Statements, Year
19 Ended 1971" is marked by the
Reporter as Plaintiff's Exhibit
6 for identification.)

20 MR. McGRANE: Q. The next is for the year ending
21 December 31st, 1973. This is for the six months ending
22 June 30, 1972. There are financial statements which
23 Atari and yourself produced in connection with other
24 litigation.

25 (Whereupon, the seven-page
26 document entitled "Syzygy
27 Company Financial Statements
28 Six Months ended June 30, 1972"
is marked by the Reporter
as Plaintiff's Exhibit 7 for
identification.)

1 MR. McGRANE: Q. The two documents that, I have shown
2 you reflect in the footnotes an initial 50/50 partnership
3 which was later changed to another arrangement, which I
4 believe --

5 MR. MUNRO: 60/40.

6 MR. McGRANE: Q. I don't think it was a 60/40
7 partnership basis. It was 60/40 on profits. Would you
8 just read that?

9 THE WITNESS: A. Sixty percent of revenues, expenses,
10 assets and liabilities: Forty percent of revenue expenses,
11 assets and liabilities.

12 Q. Do you remember when you incorporated Atari
13 that your relative position with Mr. Dabney in terms of
14 ownership of the corporation remained about the same as
15 it was before you incorporated?

16 A. Yes.

17 Q. Do you remember now, Mr. Bushnell --

18 MR. MUNRO: Have we got that one copied?

19 MR. McGRANE: Let's do it at the end.

20 Q. Do you remember that when you got your stock in
21 this company that you had three shares to every two shares
22 Mr. Dabney had approximately?

23 THE WITNESS: A. That seems all right, yes.

24 MR. McGRANE: Off the record.

25 (Whereupon, a discussion was held off the record.)

26 MR. McGRANE: Q. After Atari made the agreement with
27 Mr. Dabney to pay him what is recited in the agreement --

28 MR. MUNRO: Let's just say after they made the

1 agreement, Bill, whatever the agreement is, all right, so
2 we don't have to get into argument about what the agreement
3 is. As soon as you ask a question in which you say the
4 agreement to do this or that, you get into trouble.

5 MR. McGRANE: Do you disagree with the proposition
6 that this agreement says that it's going to pay Dabney a
7 quarter of a million dollars for a patent application?

8 MR. MUNRO: That document says what it says.

9 MR. McGRANE: That's what it says.

10 MR. MUNRO: It says a lot of things.

11 MR. McGRANE: It says that they are going to pay him
12 a quarter of a million dollars for his interest in the
13 Pong invention.

14 MR. MUNRO: I agree that that's what it says.

15 MR. McGRANE: I want to ask him a question about that.
16 Let's not get off in Never-Never Land, Bruce. The document
17 says that. I want to ask him a question about it.

18 MR. MUNRO: Go ahead. Ask him the question.

19 THE WITNESS: Go ahead.

20 MR. McGRANE: Q. Do you remember after Atari made
21 the agreement, which is Exhibit 2, to pay Dabney this
22 two hundred forty-six thousand --

23 MR. MUNRO: We know what it says, Bill. In your
24 question you don't have to tell us what it says. That's
25 what I am trying to say. We can read as well as you can.
26 Go ahead.

27 MR. McGRANE: Q. Mr. Bushnell, after Atari made
28 the agreement to pay Mr. Dabney approximately a quarter of

1 a million dollars in exchange for his interest, in the
2 patent application, do you recall at what value Atari
3 carried the patent application on its books of accounting?

4 THE WITNESS: I don't have the foggiest.

5 Q. Have you ever known at what value Atari has
6 carried the patent application or the patent after issuance
7 on its books? A. No.

8 Q. Now, in 1976 you sold your company -- you
9 personally sold your stock in Atari Company to Warner
10 Communications; that's true, isn't it?

11 A. Correct.

12 Q. Do you know whether Atari, Inc., a California
13 corporation, was merged into another company which was
14 Atari, Inc., a Delaware corporation, the shares of which
15 were initially owned by Warner Communications, Inc.?

16 A. Yes.

17 Q. And do you know whether any of the assets of
18 Atari, Inc., whether it's the patent application or the
19 patent or the machinery or anything else, received a
20 stepped up basis following conclusion of the merger of
21 Atari, Inc., a California corporation, into Atari, Inc.,
22 a Delaware corporation?

23 A. Yes. I think some of the assets were.

24 MR. MUNRO: I am going to make the objection just
25 so that we don't get too far. I am not going to let you
26 get into the details of the sale to Warner Communications,
27 Bill. As I have told you, that is irrelevant and off limits.
28 Off the record.

1 (Whereupon, a discussion was held off the record.)

2 MR. McGRANE: Counsel, the next question I am going to
3 ask is going to ask Mr. Bushnell whether this patent
4 application -- whether the patent received a stepped-up
5 basis and was given a higher valuation on the books of the
6 Warner subsidiary of Atari, Inc., a Delaware corporation.

7 If your position is that that's irrelevant, I'd be
8 entitled to take you before the Judge on that issue.

9 Q. Mr. Bushnell, do you know at what value the
10 patent number 373498 which is the subject of this litigation,
11 is presently carried on the books of account of Atari, Inc.,
12 a Delaware corporation, of which you are an executive?

13 THE WITNESS: A. No.

14 Q. You don't know?

15 THE WITNESS: A. (The witness shakes his head in
16 the negative.)

17 Q. Do you know generally whether that patent
18 received an increase in basis as a result of the merger of
19 Atari, Inc., a California corporation, into Atari, Inc.,
20 a Delaware corporation?

21 MR. MUNRO: For that question I am going to require
22 you to define what you mean by an increase in basis.

23 MR. McGRANE: Q. Was the stated value of the patent
24 increased over what it was carried at the books of account
25 on Atari, Inc., a California corporation over what it was
26 at Atari, Inc., a Delaware corporation?

27 THE WITNESS: A. I don't know.

28 Q. You don't know. Are there any documents which

1 you would look at in order to refresh your recollection as
2 to what the present basis of Atari, Inc., a Delaware
3 corporation, is in the patent No. 3793483?

4 What would you look at?

5 A. I don't know. I've asked one of my people.

6 Q. Who would you ask?

7 A. The treasurer.

8 Q. Who is that? A. The vice-president
9 of finance.

10 Q. Who is that? A. Dick Groth.

11 Q. Is he a former partner at the RPM Company?

12 A. Yes.

13 Q. Who is your present outside auditor?

14 A. Arthur Hue.

15 Q. Mr. Groth is an employee?

16 A. Correct.

17 Q. He's no longer associated for a vice-president
18 of the company? A. Correct.

19 Q. Can you give me an explanation for why Atari,
20 Inc. agreed to pay Dabney approximately \$50,000 for his
21 interest in the patent application and roughly a year
22 later you gave Atari your interest in the patent application,
23 pursuant to Plaintiff's Exhibit 4, for \$1?

24 MR. MUNRO: I am going to object to the form of that
25 question. Mr. Bushnell has not testified that Atari, Inc.
26 agreed to pay \$245,000 for Mr. Dabney's interest in the
27 patent application. In fact, you have already heard Mr.
28 Bushnell tell you as far as he is concerned Mr. Dabney didn't

1 have any interest in the patent application as, such, other
2 than as a partner in the Syzygy Company. So, I will
3 continue to object to the form of that question if you
4 ask it in that manner.

5 We know what the piece of paper says. You are asking
6 him his subjective understanding of the agreement, which is
7 obviously not the same as what the piece of paper says.
8 That's why you are running into trouble with that question.

9 MR. McGRANE: Q. Do you recall how many shares of
10 stock you had in Atari from a percentage basis, not numbers
11 of shares, which you made the formal assignment of your
12 ownership of the patent itself -- I guess it was still a
13 patent application in June, 1974.

14 MR. MUNRO: That's Plaintiff's Exhibit 4?

15 MR. McGRANE: Yes, sir.

16 THE WITNESS: No, I don't.

17 MR. McGRANE: Q. Did you own most of the stock of the
18 company at that time, sir?

19 THE WITNESS: A. I don't think so. Well, I had
20 over half. I don't remember who else. I think I granted
21 some of the shares.

22 Q. Did you ever tell anybody who was either -- did
23 you ever tell anybody, who was thinking of buying shares
24 in Atari or was an employee who was getting shares in
25 Atari in exchange for services or for any other reason --

26 MR. MUNRO: That assumes there was such a person,
27 Bill. He hasn't said that. I don't know that that's the
28 case. Why don't you just ask him if that's the case.

1 MR. McGRANE: I have a list of shareholders. We got
2 some from the Corporation Commissioners. It's got a list
3 of shareholders about ten miles long. I suppose that you'd
4 know that.

5 MR. MUNRO: You are making assumptions that you can't
6 necessarily make.

7 MR. McGRANE: I disagree with the fact I can't make
8 them because they are correct. I think everybody knows it.

9 MR. MUNRO: You don't know that this witness is making
10 the same assumption you are making.

11 MR. McGRANE: I understand.

12 MR. MUNRO: You have to ask this witness the direct
13 question.

14 MR. McGRANE: I understand the rules. I am just trying
15 to speed things up. If you want me to do it the hard way,
16 we'll do it the hard way.

17 MR. MUNRO: I don't want you to do it the hard way.

18 MR. McGRANE: You leave me very little choice.

19 THE WITNESS: What is it you want to know?

20 MR. MUNRO: Yes. What do you want to know?

21 MR. McGRANE: You didn't let me finish the question
22 because you made an objection. You don't know what I was
23 going to ask because you didn't give me a chance to finish
24 the question.

25 MR. MUNRO: Go ahead. Ask your question.

26 MR. McGRANE: Thank you.

27 Q. Mr. Bushnell, did you ever tell anybody, who
28 was either a buyer or an employee who was receiving shares

1 for one reason or another, that the patent application and/or
2 the patent -- let's leave it at a patent application, because
3 you made an assignment after January, 1974. The patent
4 application prior to January, 1974, that the patent
5 application belonged to Atari, Inc. and not to you?

6 THE WITNESS: A. I don't remember.

7 Q. You don't remember one way or the other?

8 A. No. I really think at that time I had forgotten
9 about the patent.

10 Q. Okay. We have a request for production of
11 documents, which asks for your financial statements which
12 counsel has objected to. I don't have that information
13 and really can't question you too closely about what your
14 balance sheet looks like at the period of time. The
15 Agreement to Redeem Stock, which is Plaintiff's Exhibit 3,
16 recites that the book value of the shares held by Dabney,
17 which I think we've agreed, were approximately 40 percent
18 of the corporation, amounted to \$86,500.

19 Do you remember how much money Atari made between
20 July 1st, 1973, and February 28th, 1973?

21 A. No.

22 Q. Did you have any new money or investors come
23 into the company during that period of time, other than
24 yourself and Mr. Dabney as the founders?

25 A. I think there were some employees. There
26 aren't any investments per se.

27 Q. Did any of the employees contribute money as
28 opposed to services to the company?

1 A. I think they had options. I don't remember.

2 Q. Okay. Did you have an opinion as to what fair
3 market value of Mr. Dabney's shares of stock in Atari was
4 in February, 1973, March, 1973?

5 A. No.

6 Q. None?

7 MR. MUNRO: He answered the question.

8 MR. McGRANE: Q. Was there any particular reason why
9 it was agreed pursuant to Exhibit 3 to buy Dabney out at
10 book value pursuant to the March 1st, 1973, agreement?

11 THE WITNESS: A. It's between Dabney and his attorney.
12 I don't know why that was decided.

13 Q. I see. Did you think there was any tax
14 advantage to Atari, Inc. in structuring the repurchase of
15 Mr. Dabney's interest in Atari as an partial purchase of
16 technology and partial purchase of stock?

17 A. I wasn't even concerned about it. I just wanted
18 Dabney out.

19 Q. Did you have any thought that if the agreement
20 were structured in such a way as to reflect an essentially
21 untrue state of affairs for Dabney's tax benefit that that
22 would result in a loss of revenue to the Treasury of the
23 United States?

24 MR. MUNRO: Counsel, that's irrelevant.

25 MR. McGRANE: Q. Go ahead.

26 THE WITNESS: I felt that Dabney's attorney would
27 be very careful. Dabney really wanted to have the whole
28 thing done his way.

1 Q. But didn't you understand that doing it his
2 way amounted to making statements and written documents
3 which would not reflect the true state of affairs and
4 mislead somebody auditing Dabney's tax returns?

5 MR. MUNRO: I am going to object to that question
6 as irrelevant and compound.

7 MR. McGRANE: Q. Go ahead.

8 THE WITNESS: I am not going to answer it just on
9 principles.

10 Q. Your lawyer hasn't instructed you not to
11 answer, Mr. Bushnell.

12 MR. MUNRO: Would you read the question back to me?

13 (Whereupon, the preceding question was read by the
14 Reporter.)

15 THE WITNESS: Yes, I didn't think anything about it.
16 I was willing to do it Dabney's way.

17 MR. McGRANE: Q. Even though you understood that
18 what was being recited in these documents was completely
19 untrue?

20 MR. MUNRO: Counsel, that's argumentative. I am
21 going to advise the witness not to answer that question.
22 That is clearly an argumentative question and has been
23 asked and answered.

24 Q. Take a look at Plaintiff's Exhibit 2.

25 MR. MUNRO: Counsel, we know what Exhibit 2 says. We
26 know what he's testified. What you are trying to do is
27 argue with him.

28 MR. McGRANE: That's not true.

1 MR. MUNRO: Yes, you are.

2 MR. McGRANE: That's not true.

3 MR. MUNRO: You are saying: "Look, Bushnell, this
4 is what the understanding was, and this is what the agreement
5 says." And you look at it and say that it's inconsistent,
6 and we understand that.

7 Now, you are arguing with him because it's inconsistent.

8 MR. McGRANE: It's not inconsistent. What I am trying
9 to get the witness to say on the record is that he knew that
10 Dabney was lying to the tax authorities; that he cooperated
11 in that and he is accusing Dabney of tax fraud.

12 MR. MUNRO: He is not accusing Mr. Dabney of anything.
13 You are asking questions and he is trying to give you
14 answers. The problem is you keep asking the same question
15 over and over again. He is not accusing Mr. Dabney as to
16 anything with regard to his tax return. He is telling you
17 what he recollects the facts to be, and then you are arguing
18 with him.

19 MR. McGRANE: Fine. I am supposed to ask questions,
20 and he is supposed to answer them. I don't think we ought
21 to argue with each other. I am going to continue to
22 ask questions along this line. I think I should ask the
23 questions, and you make objections as called for.

24 Q. Mr. Bushnell, paragraph 2 of the agreement to
25 sell, which is marked as Plaintiff's 2 in this deposition,
26 reads in part: "Whereas Seller and Nolan Bushnell, herein-
27 after called Bushnell, hereinafter called Bushnell, through
28 their joint physical, mental and financial effort, developed

1 an invention commonly known as the game called Pong."

2 Is that a true statement or a false statement?

3 A. It's true.

4 Q. It's true. "Whereas on July 1st, 1972,
5 Atari, Inc., Buyer, was formed and certain assets were
6 transferred to Buyer with the exception of said invention,
7 which was retained by the Seller and Bushnell, individually."

8 Is that true?

9 A. I don't remember.

10 Q. You don't remember one way or the other?

11 MR. MUNRO: He's answered the question.

12 MR. McGRANE: "Whereas on November 24, 1972, a patent
13 application was filed for the invention of Pong and said
14 application was given application No. 309,268."

15 Is that true?

16 THE WITNESS: A. I guess.

17 MR. MUNRO: Well, he is guessing.

18 MR. McGRANE: You can't object. If he gives an answer,
19 I don't know what to do.

20 THE WITNESS: I don't remember what the patent number
21 is and the exact date.

22 MR. McGRANE: Q. The next statement in the agreement
23 reads as follows: "Seller agrees to sell all interest,
24 individual, partnership, or otherwise, in the invention
25 Pong to buyer for \$246,418."

26 Was that true?

27 MR. MUNRO: Who is Seller?

28 MR. McGRANE: Seller is Dabney.

1 THE WITNESS: I guess.

2 MR. McGRANE: Q. In other words, Dabney agreed to
3 sell his interest in the invention for that money to Atari?

4 THE WITNESS: A. I think that's a safe thing to do.
5 He was --

6 MR. MUNRO: You are asking this witness what Dabney
7 was doing.

8 MR. McGRANE: This witness signed this document as
9 president of Atari, acknowledging the fact that this is
10 what was going on. The document recites a transaction.
11 If the transaction didn't occur, it would be a false
12 statement. You know that.

13 MR. MUNRO: Mr. McGrane, the problem is, as I said,
14 the document speaks for itself.

15 MR. McGRANE: I am asking this witness his
16 independent recollection of the truthfulness of the
17 recitations made in the document which is a perfectly
18 proper form of examination as you know.

19 MR. MUNRO: You are asking him as to a recitation as
20 to what Mr. Dabney was doing?

21 MR. McGRANE: Right. This witness signed a document
22 which contained a recitation that Dabney was doing something.
23 I am asking him whether, of his own knowledge, he knew that
24 Dabney was doing that.

25 MR. MUNRO: Okay. That's a different question.

26 MR. McGRANE: I don't agree.

27 MR. MUNRO: You are asking what the document says?

28 MR. McGRANE: I said the document says this is true,

1 Mr. Bushnell? That's off the wall. Sorry. Let's do it
2 again.

3 Q. Mr. Bushnell, the document says, "Seller agrees
4 to sell all interest, individual, partnership, or otherwise,
5 in the invention Pong to Buyer for \$246,418."

6 Is that really what happened?

7 MR. MUNRO: And I object to that question as being
8 argumentative. The document speaks for itself.

9 MR. McGRANE: Q. Go ahead.

10 THE WITNESS: A. I don't know.

11 Q. You don't know whether that's really what
12 happened?

13 MR. MUNRO: That's what he answered. The question
14 has been asked and answered. He did not know.

15 MR. McGRANE: I get a different answer every time I
16 ask this question.

17 MR. MUNRO: Then stop asking it over and over again.

18 MR. McGRANE: That's ridiculous. I am entitled to
19 one consistent answer.

20 THE WITNESS: Isn't that what you want?

21 MR. MUNRO: You're doing fine. You are harassing
22 the witness. You ask him a question.

23 MR. McGRANE: Off the record.

24 (Whereupon, a discussion was held off the record.)

25 MR. McGRANE: Q. Mr. Bushnell, did Atari agree with
26 Mr. Dabney that Atari would buy Mr. Dabney's interest in
27 a patent for a quarter of a million dollars in 1973?

28 A. I don't believe that's what it said.

1 MR. MUNRO: He is asking now for your recollection.
2 If that's your recollection that you bought out Dabney's
3 interest in the patent.

4 THE WITNESS: I don't remember, no.

5 MR. McGRANE: Q. Is it your recollection that you
6 did not do that?

7 THE WITNESS: A. I am recollecting that we did this
8 agreement that had the nature of being tax-effective for
9 Mr. Dabney. If we threw in technology for some reason that
10 was going to be good. Since Dabney did help develop Pong
11 that sounded reasonable. There was a cabinet design
12 patent that I think we had filed on the thing, which was
13 a design patent. There was a lot of other things.

14 To say that Dabney didn't help develop Pong is not
15 true, because he did. There is another serious question
16 about his real contribution to the patent.

17 Q. Are you saying that the way the deal was
18 structured in your opinion was a reasonable reflection of
19 the true facts?

20 MR. MUNRO: He didn't say that.

21 MR. McGRANE: I am asking it as a question. I am not
22 sure whether he said it or not.

23 MR. MUNRO: That calls for a conclusion. The document
24 again speaks for itself.

25 MR. McGRANE: I am not asking about the document, sir.
26 I am asking about the transaction, whether it is his present
27 recollection that the way the transaction was structured,
28 i.e., paying eighty-six thousand for the shares and a

1 quarter of a million for his interest in the patent
2 application as it's recited in the contemporaneous documents,
3 whether you remember today that that was a reasonable way
4 to do it in light of the true facts.

5 THE WITNESS: I think that was fair, yes.

6 MR. McGRANE: Q. Fine. Do you remember, Mr. Bushnell,
7 whether you had any concern in 1973 at the time, on behalf
8 of Atari, you executed Plaintiff's Exhibit 2 that any
9 patent issued pursuant to the patent application that you
10 had made, based on the computer space game, might be invalid
11 on account of the on sale bar?

12 A. Would you repeat the question?

13 MR. McGRANE: Read it back.

14 (Whereupon, the preceding question was read by the
15 Reporter.)

16 THE WITNESS: At that time?

17 MR. MUNRO: First of all, I am going to object to the
18 form of the question. It assumes that the witness made a
19 patent application on the basis of the computer space
20 game. He hasn't said that.

21 MR. McGRANE: Q. Mr. Bushnell, isn't it true that
22 the patent application that you made in November 24, 1972,
23 was in part at least based on research and development
24 work done during the course of development work on the
25 computer space game?

26 THE WITNESS: A. No.

27 Q. That's not true?

28 A. You say at least on part?

1 Q. Isn't it true that the first commercial application
2 of the Modulus Counting System was employed in the computer
3 space game?

4 A. Yes.

5 Q. Isn't it true that at least part of the development
6 of that counting system occurred during the course of your
7 work at Nutting Associates on the development of the
8 computer space game?

9 A. I don't remember.

10 Q. You don't remember?

11 A. No.

12 Q. Okay. This is beyond the scope of the
13 deposition, Bruce.

14 MR. MUNRO: I understand that. Go ahead.

15 MR. McGRANE: If you want me to pursue that line, I'll
16 be happy to.

17 MR. MUNRO: If you just ask him the patent instead of
18 going through a lot of other rigmarole, you won't get in
19 trouble.

20 Off the record.

21 (Whereupon, a discussion was held off the record.)

22 MR. McGRANE: Q. Mr. Bushnell, do you remember
23 whether in 1973, you were concerned that if a patent were
24 issued on the patent application that you had made that
25 you would have some potential difficulty with the on sale
26 bar?

27 THE WITNESS: A. No.

28 Q. Do you remember that you didn't have that concern?

1 A. Not at that present time. I wasn't thinking about
2 anything but trying to build as many Pong games as I could.
3 The nature of successful business is to --

4 MR. MUNRO: Don't. I am sorry. Go ahead. Ask a
5 question.

6 MR. McGRANE: Thank you.

7 Q. Did you have any opinion yourself as to what the
8 potential value of a patent, of a kind for which you had
9 applied, was in March of 1973?

10 A. No.

11 Q. If somebody had offered to sell you the patent,
12 what would you have paid them for it?

13 A. I didn't believe in licensing at that time.

14 MR. MUNRO: I am going to object to that question,
15 Bill, as being hypothetical.

16 MR. McGRANE: I will withdraw it then. That's fine.

17 Q. Mr. Bushnell, in your last deposition we went
18 over briefly the licensing agreement that Atari, Inc.
19 entered into with Midway Manufacturing, relative to VP-I,
20 which was a game similar to Pong. I want to ask you a
21 question which relates to what the method was that was used
22 to calculate the royalties that were paid you by Midway on
23 account of their license of the Pong game from Atari.

24 Do you remember how the figures, the monies that were
25 paid you, were calculated?

26 A. It was a percentage of gross sales.

27 Q. Gross sales?

28 A. Yes.

1 Q. Okay. That was for all games employing the
2 technology which you made available to Midway to manufacture
3 the Pong game?

4 MR. MUNRO: I am going to object to that. It was
5 for whatever the agreement says it was for. Asking this
6 witness to recollect what is in that agreement is unfair.
7 You have that information readily available to you. Off
8 the record.

9 (Whereupon, a discussion was held off the record.)

10 MR. McGRANE: Q. Look at page 2.

11 THE WITNESS: A. Paragraph 2 or page 2?

12 Q. There is something about \$31. Page 2.

13 MR. MUNRO: Are we looking at the Midway agreement?

14 THE WITNESS: I don't remember.

15 MR. MUNRO: The agreement says \$31. What is the
16 question?

17 MR. McGRANE: Q. Do you recall that that \$31 was
18 calculated on the basis of figuring in percentage of what
19 you expected the gross sales price of each unit to be?

20 THE WITNESS: A. I think we talked about it. I
21 don't remember this \$31.

22 Q. How much were Pong games selling for initially
23 when you first started making them?

24 A. Nine hundred and twenty-five dollars, I think.

25 Q. Do you recall that you approached Gremlin
26 Industries, Gremlin Corporation, about licensing a game
27 called Blockade?

28 A. I don't think I did, no.

1 Q. Do you recall somebody in your company did that?

2 A. May have.

3 Q. Do you know anything at all about the
4 percentages that were talked about in terms of licensing
5 royalties? A. No.

6 Q. Do you recall what percentages you discussed
7 with Midway? A. No, I don't.

8 Q. Do you recall whether it was ten percent or
9 less than ten percent?

10 A. It would be under five.

11 Q. Under five? A. Yes.

12 Q. Would it be three percent, sir?

13 MR. MUNRO: He has told you he doesn't recall.

14 MR. McGRANE: I am trying to refresh his recollection.

15 MR. MUNRO: You can't refresh his recollection by
16 throwing out numbers.

17 MR. McGRANE: Q. Do you recall if it was three
18 percent?

19 THE WITNESS: A. No, I don't.

20 Q. But any royalty would have been under five
21 percent; that's true?

22 A. I don't know of anything that has been higher
23 than that.

24 Q. Do you know of any that have been lower than
25 five percent? A. Yes.

26 Q. Who? Where?

27 A. I don't remember.

28 Q. You sent a series of letters out to competing

1 manufacturers who were making video games, and you suggested
2 that they license the Modulus Counting System, Atari?

3 A. Yes.

4 Q. Do you recall what you had in mind to charge
5 those people on a percentage basis if they chose to license
6 from you?

7 A. As much as I possibly could
8 get.

9 Q. Do you recall that you had set some target
10 figure, sir?

11 MR. MUNRO: You have asked these questions in the
12 previous deposition.

13 MR. McGRANE: I've been through the testimony last
14 night, and I don't believe that I have.

15 THE WITNESS: No. We didn't have any real target.

16 MR. McGRANE: Q. Did you intend to charge more than
17 five percent?

18 THE WITNESS: A. If I could possibly get away with
19 it.

20 Q. Did you have any expectation you could get away
21 with more than five percent?

22 MR. MUNRO: I am going to object. You are asking him
23 for speculation.

24 MR. McGRANE: That's not speculation.

25 MR. MUNRO: He told you what he was going to charge,
26 which was as much as he could get, as much as somebody else
27 would agree to pay.

28 MR. McGRANE: Generally, Mr. Munro, when you make an
offer to somebody, you don't counteroffer on those terms.

1 What I am asking this witness is what he had in mind as an
2 asking price.

3 MR. MUNRO: He didn't make any offers.

4 MR. McGRANE: Well, my question is: Does he remember
5 what it was he had in mind back then?

6 THE WITNESS: No, I don't.

7 MR. McGRANE: Q. Is there anybody who was involved
8 with you? Did you talk to your patent lawyers about how much
9 you should charge, what was a reasonable rate?

10 THE WITNESS: A. I just think that's a negotiated
11 item. I always felt I was as good at negotiating as anybody.

12 Q. Did you intend to charge each manufacturer a
13 different rate?

14 A. I don't remember everything about it.

15 Q. I see. Do you remember that you were sued by
16 the Magnavox Company for patent infringement for infringing
17 their patents? A. Yes.

18 Q. Do you recall what license rates they sought to
19 extract from you for using their patented devices?

20 A. Not specifically. I can remember it was a
21 sliding scale that went down with manufacturing.

22 Q. Again, it was calculated on a gross sales
23 basis? A. Yes.

24 Q. Okay. I am going to show you an article that
25 appeared in TIME magazine. I have taken the liberty of
26 underlining a part of it.

27 A. Yes.

28 Q. Okay. Were you interviewed by TIME magazine?

1 A. I don't remember. I've been interviewed by a
2 lot of people.

3 MR. McGRANE: Off the record.

4 (Whereupon, a discussion was held off the record.)

5 (Whereupon, the one-page article
6 from TIME magazine dated
7 April 1, 1974, is marked by
8 the Reporter as Plaintiff's
 Exhibit 8 for identification.)

9 MR. McGRANE: Q. Now, the statements that's made in
10 the TIME article says: "Atari, whose Pong machines were
11 the first to show up in penny arcades, has secured a
12 patent on the electronic circuitry that makes the games
13 possible. Its management contends that other manufacturers
14 should therefore be paying Atari a royalty on each game
15 they produce."

16 MR. MUNRO: That's what the TIME article says. I
17 want to make that clear for the record.

18 MR. McGRANE: I said it and you said it.

19 MR. MUNRO: Okay.

20 MR. McGRANE: I think it's pretty clear.

21 MR. MUNRO: What is the question?

22 MR. McGRANE: Q. The question is: Is it true that
23 Atari management has ever contended that other manufacturers
24 should be paying Atari a royalty on each game they produce?

25 THE WITNESS: A. That is what the TIME article says.

26 Q. Is it true?

27 A. What is true?

28 Q. Is it true that the Atari management is taking
a position contending that other manufacturers of video games,

1 Pong and other games, should be paying royalties to Atari
2 each time they made a game?

3 A. If they infringed any patents that we have, yes.

4 Q. Did you ever make an investigation to determine
5 whether the electronic circuitry employed by other manufac-
6 turers infringed the patent which you were granted after you
7 were granted it?

8 MR. MUNRO: At this point, I am going to counsel the
9 witness that in terms of any investigation, vis-a-vis infringe-
10 ment rights involved, consultations were involved, and the
11 attorney-client privilege.

12 MR. McGRANE: I am not asking what his lawyer told him.

13 MR. MUNRO: I am not asking what he told his lawyer
14 either.

15 MR. McGRANE: I am asking what the company concluded
16 in terms of what other people were doing, whether their games --

17 MR. MUNRO: To the extent that that conclusion is based
18 upon advice of patent counsel, I am going to advise him that
19 he is not obliged to answer. If you want to ask him if
20 Atari went out and looked inside other people's games to
21 see how they were being made, that's one thing. Your question
22 is not clear in that regard.

23 If you are asking him what legal conclusion they drew
24 as to whether somebody else was or was not infringing on
25 their patent, that is privileged.

26 MR. McGRANE: I am not asking him to tell me anything
27 he told his lawyers or his lawyers told him.

28 Q. Can you tell me whether you concluded, independent

1 of reciting to me what your lawyers told you or what you
2 told your lawyers, that there were companies out there
3 making games which infringed your patents?

4 THE WITNESS: A. We looked at schematics and tried
5 to ascertain whether or not there were some equivalent.

6 MR. McGRANE: Would you mark these next two documents
7 in order?

8 (Whereupon, the eight-page
9 document entitled "Patent
10 Infringers(United States)"
11 is marked by the Reporter
12 as Plaintiff's Exhibit 9
13 for identification.)

14 (Whereupon, the two-page
15 document entitled "Foreign
16 Patent Infringers" is marked
17 by the Reporter as Plaintiff's
18 Exhibit 10 for identification.)

19 MR. McGRANE: Q. Mr. Bushnell, would you look at
20 Exhibits 9 and 10? I will represent to you that those
21 were produced by your company in other unrelated litigation.

22 MR. MUNRO: Other unrelated litigation?

23 MR. McGRANE: Yes.

24 MR. MUNRO: What other litigation?

25 MR. McGRANE: Fun Games.

26 MR. MUNRO: I wouldn't necessarily say that's
27 unrelated.

28 MR. McGRANE: A different court with a different
judge and different issues.

MR. MUNRO: Fine. Go ahead. What is the question?

MR. McGRANE: Q. Have you ever seen any of these
documents before, sir?

1 THE WITNESS: A. I don't think so. *

2 MR. MUNRO: You don't think so?

3 THE WITNESS: Yes.

4 MR. McGRANE: Q. But you do recollect that the company
5 made an investigation of schematics that were being used
6 by other companies?

7 THE WITNESS: A. Correct.

8 Q. Do you know whether anybody was instructed to
9 prepare a list of infringers?

10 A. Obviously someone was. I don't remember.

11 Q. Okay. Do you remember whether it was concluded
12 by the company that there was widespread infringement of
13 the patent?

14 MR. MUNRO: I am going to object to the form of the
15 question that it was concluded by the company. I don't
16 know what that means. The company is made up of a bunch of
17 individuals.

18 MR. McGRANE: I understand that.

19 MR. MUNRO: You are asking him what his conclusion
20 was, what Mr. Keenan's conclusion was or somebody else?

21 THE WITNESS: I felt there were a lot of infringers.
22 K-e-e-n-a-n.

23 MR. McGRANE: Q. Is it also true that you thought that
24 the patent had widespread application throughout the
25 industry?

26 THE WITNESS: A. Yes.

27 Q. Okay. Now, you were making video games during
28 the years 1971, '72, '73, '74, '75, '76 and up to the present?

1 A. And '71.

2 Q. Well, for somebody else?

3 A. No. For Syzygy. You have forgotten all about
4 that thing; haven't you?

5 Q. You were making video games during the years
6 -- strike that.

7 MR. MUNRO: You personally, you Atari? Who is "you"?

8 MR. McGRANE: The Syzygy Company and Atari as a
9 successor and Atari, Inc., a Delaware corporation, a
10 successor, an interest of Atari, Inc., a California
11 corporation, have all made video games over the last five
12 years?

13 THE WITNESS: A. Correct.

14 Q. And have any of those games not employed the
15 Modulus Counting System?

16 A. Yes.

17 Q. Can you tell me which games, or if it's shorter
18 just list which games haven't.

19 A. No, I can't. I think most of the microprocessor
20 games do not.

21 Q. How recently has Atari, Inc., whether a Delaware
22 or a California corporation, been making microprocessor
23 games?

24 A. A couple of years.
Two years.

25 Q. Can you name the first microprocessor game that
26 was made?

A. No.

27 MR. MUNRO: Don't guess.

28 THE WITNESS: No, I can't.

1 MR. McGRANE: Q. Does the present Atari home game
2 employ a microprocessor? This is the cartridge deal.

3 THE WITNESS: A. Yes.

4 Q. Okay. Does it employ the Modulus Counting
5 System? A. I don't think so.

6 Q. Did the Pong and Super Pong units, which were
7 the predecessor products to the present Atari cartridge
8 home game, employ the Modulus Counting System?

9 A. I think they did.

10 Q. Have all of Atari games in the last two years
11 been microprocessor rather than Modulus Counting System
12 games? A. No. I think there have
13 been a couple of exceptions.

14 Q. And have the exceptions uniformly used the
15 Modulus Counting System to your knowledge?

16 A. I believe so.

17 Q. Either it's a microprocessor a Modulus Counting
18 System? A. Given that it's a video
19 game?

20 Q. Yes, sir.

21 A. Yes.

22 Q. Do you have any idea what the gross sales of
23 devices by Atari using the Modulus Counting System have
24 been from incorporation to the present?

25 A. No.

26 Q. Is it in excess of \$10 million, sir?

27 A. Yes.

28 Q. Is it in excess of \$100 million?

1 A. I don't know.

2 Q. Is it in excess of fifty million?

3 A. I don't know.

4 Q. Is it in excess of twenty-five million?

5 A. I don't know.

6 Q. You don't know at all?

7 A. I think it's over ten million.

8 Q. Do you recall that in the year 1976, you had
9 gross sales of \$39 million?

10 A. Yes.

11 Q. Do you know of those gross sales what percentage
12 were of devices employing the Modulus Counting System?

13 A. No, I don't.

14 Q. Isn't it true that all of the games that were
15 made during that year employed the Modulus Counting System?

16 A. May have.

17 MR. MUNRO: What year?

18 MR. McGRANE: Fiscal 1976 prior to the sale to Warner.

19 THE WITNESS: No. I will take that back. I don't know.

20 MR. McGRANE: Q. You don't think what?

21 THE WITNESS: A. I don't think that they all employed
22 the Modulus Counting System.

23 MR. McGRANE: I'd like to mark this.

24 Mr. Bushnell, I am going to show you one other
25 document.

26 I'd like to have it marked as a continuation of
27 Plaintiff's 9, if I may, Bruce, since it's document 177.

28 Q. Do you recollect that Control Sales, Inc. of

1 Des Plaines, Illinois, was making a home video game in 1975?

2 THE WITNESS: A. Yes.

3 Q. Do you recall concluding that they had employed
4 your Modulus Counting System to accomplish that purpose?

5 A. I don't remember that.

6 Q. You don't remember one way or the other?

7 A. No.

8 MR. MUNRO: Off the record.

9 MR. McGRANE: I'd like to have this marked as 11,
10 then.

11 (Whereupon, the one-page article
12 from Business Week magazine
13 dated November 10, 1973, is
14 marked by the Reporter as
Plaintiff's Exhibit 11 for
identification.)

15 MR. McGRANE: Q. This article in part reads -- Mr.
16 Bushnell, the article that has been marked as Plaintiff's
17 Exhibit 11 reads in part: "But Atari has just been granted
18 a patent on some of the basic techniques for generating
19 moving symbols on a display screen, and Bushnell intends
20 to use it. 'People won't be able to copy our circuit
21 boards again,' he insists."

22 Do you recall being interviewed by Business Week in
23 1973?

24 THE WITNESS: A. Yes.

25 Q. Do you remember making that statement that's
26 attributed to you in this article?

27 A. No.

28 Q. Do you recall that you did not make such a

1 statement and were misquoted?

2 A. No. I don't remember either.

3 Q. Is it a true statement that the patent, which
4 is the subject of this litigation, is "a patent on some
5 of the basic techniques for generating moving symbols on
6 a display screen"?

7 A. Yes.

8 Q. That's true?

9 A. (The witness nods his head in the affirmative.)

10 Q. You have to say something.

11 A. Yes.

12 MR. MUNRO: Off the record.

13 (Whereupon, a discussion was held off the record.)

14 MR. McGRANE: Q. Do you have any opinion, Mr.
15 Bushnell, as to whether or not the use of the patented
16 device and the advertisement of the patented device by
17 putting the number on the games that you made had any
18 effect in preventing the copying by others of any Atari
19 games?

20 THE WITNESS: A. You handed me a page a few minutes
21 ago of five hundred copiers. You have the gall to ask me
22 that question.

23 MR. MUNRO: He's just asking you if you have an opinion.
24 Okay. All right. I see.

25 THE WITNESS: I would hate to have seen what would
26 have happened had those had any effect.

27 MR. McGRANE: I didn't understand. What do you mean
28 you would hate to have seen?

1 THE WITNESS: A. I just believe that -- I don't
2 believe that it had any significant effect on stopping
3 anyone.

4 Q. Were there some Atari games that were not,
5 in fact, copied by anyone?

6 A. Well, the bad ones. Ones that were not
7 marketable.

8 Q. Did anyone copy the Trak 10?

9 A. Yes. I think there were some guys who did it
10 in Italy.

11 Q. Did anybody do it in this country?

12 A. No.

13 Q. Were there any other games that were not
14 copied, like Trak 10, that you can think of?

15 A. There were some games that represented some
16 difficult-to-copy technology. Once we incorporated hybrid
17 circuits that are basically a six-month kind of lead time
18 thing. That slowed them down.

19 Q. Can you give me an illustration of the games
20 which were not copied which employed the Modulus Counting
21 device?

22 A. I can't think of any. I think most of them
23 were. At least overseas.

24 Q. Let's just limit the question then to the ones
25 that were not copied on the domestic market.

26 A. I don't think Gran Trak was copied. G-r-a-n
27 T-r-a-k. I don't believe that Gotcha was copied. I'd say
28 that's about it.

1 Q. Was Tank copied by anybody employing a Modulus
2 Counting device?

3 A. I don't know.

4 Q. You know of no instance where it was copied
5 employing a Modulus Counting device?

6 A. It's a very, very complex game.

7 Q. The question is: Do you know of any instance
8 where Tank was copied by a copier using the Modulus Counting
9 device?

A. Domestically?

10 Q. Domestically.

11 A. It seems like there was one. I don't remember
12 where it was.

13 MR. MUNRO: Where is your list?

14 MR. McGRANE: The list is before that. This list is
15 1975. I will show it to you.

16 Q. What's the answer to the question?

17 THE WITNESS: A. I can't think of any.

18 Q. Are there any other games that you can think of
19 that were not copied that also employed the Modulus Counting
20 System that were not copied domestically?

21 A. No.

22 Q. Is there some advantage to a manufacturer having
23 a game not be copied?

24 A. Sure.

25 Q. What's the advantage?

26 A. Don't have to bump against the marketplace.

27 Q. Does it tend to increase profits?

28 A. If you play it right you can. The antitrust laws

1 were actually written so that --

2 Q. Go ahead.

3 MR. MUNRO: It's on the record.

4 MR. McGRANE: Mark this next in order, please.

5 (Whereupon, the letter dated
6 March 31, 1976, is marked by
7 the Reporter as Plaintiff's
8 Exhibit 12 for identification.)

9 MR. McGRANE: Q. I am referring to the last part of
10 the letter. Are the statements that's made in the last
11 paragraph about the utility of the patented device true?

12 THE WITNESS: A. The patented device is worthwhile.

13 Q. Following the buy-out of Mr. Dabney pursuant to
14 the two exhibits, which have been marked as Exhibits in
15 this deposition, do you recall that on October 26, 1975,
16 there was another agreement entered into between Atari,
17 Inc. and Dabney?

18 A. Yes.

19 MR. McGRANE: Let the Reporter mark that.

20 (Whereupon, the six-page document
21 entitled "Purchase Agreement"
22 is marked by the Reporter
23 as Plaintiff's Exhibit 13 for
24 identification.)

25 MR. McGRANE: Q. I show you a document which has
26 been marked as Plaintiff's Exhibit 13 and ask you to look
27 at it and tell me if that's the agreement to which you had
28 reference in your answer.

THE WITNESS: A. I don't know. I think so.

Q. You think so?

A. Yes.

1 Q. Do you recall that after October, 1973, that
2 you personally entered into another agreement with Mr.
3 Dabney to buy some equipment and operating rights from him?

4 A. Did you say subsequently to?

5 Q. Subsequent to October 26, 1973.

6 A. Yes.

7 Q. Okay. And that as a part of that deal you got
8 Atari to release Dabney from certain obligations which he
9 had to Atari as a part of the October 26, 1973, deal?

10 A. Yes.

11 Q. I am going to show you two documents, one of
12 which is a letter of intent, I guess, and the other one
13 is an actual agreement. I ask you if those are the documents
14 that reflect the transaction.

15 A. I believe they are.

16 MR. McGRANE: Mark these next in order, please.

17 (Whereupon, the one-page letter
18 of intent is marked by the
19 Reporter as Plaintiff's Exhibit
20 14 for identification.)

21 (Whereupon, the three-page docu-
22 ment entitled "Agreement of
23 Purchase" dated May 15, 1974,
24 is marked by the Reporter as
25 Plaintiff's Exhibit 15 for
26 identification.)

27 MR. McGRANE: Q. You have reviewed the documents.
28 Are those the documents?

THE WITNESS: A. Yes.

MR. McGRANE: Off the record.

(Whereupon, a discussion was held off the record.)

1 MR. McGRANE: Q. This next document which I have shown
2 you, does that have anything to do with the transaction
3 with Dabney, which is the subject of the last two documents?

4 THE WITNESS: A. Yes.

5 Q. Can you explain what it is?

6 A. Atari defaulted on a note payment to Dabney.
7 Dabney sued us. Those three documents -- part of the thing
8 is that he had taken some Syzygy assets and was running
9 that company into the ground and wanted to get out from
10 under it. That was one of the conditions that he had of
11 an out-of-court settlement with us.

12 Q. What was it that he required?

13 I have read the documents.

14 A. I think he accelerated the payments. He wanted
15 the acceleration of the notes due and for us to take over
16 the game company, buy the game company back from him.

17 MR. McGRANE: Mark this document next in order,
18 please.

19 (Whereupon, the one-page document
20 entitled "Bill of Sale and
21 HOLD HARMLESS AGREEMENT" is
22 marked by the Reporter as
23 Plaintiff's Exhibit 16 for
24 identification.)

23 MR. MUNRO: When Mr. Bushnell was referring to the
24 game company, he meant the street operations of Syzygy.

25 MR. McGRANE: Okay.

26 Q. Mr. Bushnell, what is reflected on the document
27 which has been marked as Plaintiff's Exhibit 16 is a bill
28 of sale from Nolan Bushnell transferring certain assets

1 of Syzygy Company to -- who was the recipient of the bill
2 of sale? Who is this bill of sale to?

3 THE WITNESS: A. It must have been to Ted Olson, who
4 was the ultimate buyer of Syzygy Game Company.

5 Q. Okay. It recites that the bill of sale is
6 to Syzygy Game Company, a California corporation. Who
7 were the partners of Syzygy Game Company, a California
8 partnership?

9 A. I think it was Ted Olson.

10 Q. And who else?

11 A. I think he had a couple of guys.

12 Q. Were you a partner?

13 A. I think I started out to be, and then I wasn't.

14 Q. Okay.

15 A. I basically wanted to get out of it, but I just
16 wanted to be a conduit in getting this thing cleaned up
17 between Atari and Dabney.

18 Q. So, Atari promised to pay Dabney a quarter of
19 a million dollars and give him a note and then defaulted
20 in its payments?

21 A. Yes.

22 Q. Is it a fair statement that a quarter of a
23 million dollars was a lot of money to Atari in 1973?

24 A. It was a huge amount.

25 MR. MUNRO: I am going to object to the relevance of
26 that question.

27 MR. McGRANE: I think it has relevance when you
28 are trying to assess the underlying value of the patent,

1 Counsel.

2 Q. Did Atari have a net worth of a quarter of a
3 million dollars in 1973?

4 THE WITNESS: A. Yes.

5 Q. Did it have a net worth much in excess of a
6 quarter of a million dollars in 1973?

7 A. Yes.

8 Q. In March of 1973?

9 A. Uh-huh.

10 Q. But from a cash flow standpoint, if nothing
11 else, it was a very significant sum of money to oblige the
12 company to pay at this time?

13 A. When you say oblige the company, debts? Cash
14 is always dear.

15 Q. The terms of the note provided for ten payments
16 of twenty-four some odd thousand dollars?

17 A. Yes.

18 Q. Was \$24,000 on the payment schedule, which was
19 set forth in the note, a significant amount of money from
20 a cash standpoint to Atari at that time?

21 A. Twenty-four thousand is twenty-four thousand.

22 MR. MUNRO: I am going to object to the question.
23 That's ambiguous. A given amount of money is significant.
24 It's an ambiguous question, and it's irrelevant.

25 MR. McGRANE: Okay.

26 MR. MUNRO: Mr. McGrane, do you have any more questions
27 for Mr. Bushnell?

28 MR. McGRANE: Not at this time.

1 MR. MUNRO: Let me say that this is the second time
2 Mr. Bushnell has been deposed in this action. I have
3 discussed that we have produced Mr. Bushnell voluntarily
4 on short notice.

5 MR. McGRANE: That's true.

6 MR. MUNRO: Without any notice being filed. I
7 told you that if we did that, we would object to any
8 further depositions of Mr. Bushnell in this case. You said
9 you understood that.

10 MR. McGRANE: That's true. I said that.

T4 11 MR. MUNRO: So, I want to go on the record now, that
12 as far as I am concerned, this is Mr. Bushnell's final
13 deposition in this case. We will object to any further
14 requests from you for any further depositions from Mr.
15 Bushnell.

16 MR. McGRANE: The only thing I would say in response
17 to that is that the only thing I can see that would require
18 Mr. Bushnell's testimony before trial at this time relates
19 to the contents of the financial statements of Atari which
20 may be the subject of a motion to compel. Until I review
21 those, I really can't respond, although I appreciate
22 counsel's courtesy in making Mr. Bushnell available. I
23 sincerely hope there won't be any occasion to bother him
24 any more.

25 MR. MUNRO: Good.

26 ---o0o---
27
28

That I am a Certified Shorthand Reporter,
License No. 3676, and a Statewide Notary Public within
and for the County of Orange, State of California;

That said deposition was taken pursuant to Stipulation, at the time and place therein set forth, and was taken down by me in stenotype and thereafter transcribed into typewriting under my direction and supervision, and that the deposition is a true record of the testimony given by the witness.

IN WITNESS WHEREOF, I hereunto subscribed my
name and affixed my seal of office this 23rd day of July, 1978.

WENDY LEE VAN MEERBEKE
Certified Shorthand Reporter
and Notary Public